March 30, 2007

ENGROSSED
HOUSE BILL No. 1824

DIGEST OF HB 1824 (Updated March 29, 2007 11:19 am - DI 101)

Citations Affected: IC 8-1; noncode.

Synopsis: Regional public power authority study. Amends the definition of "clean coal technology" in various statutes. Defines the term as a technology used at an electric or a steam generating facility to reduce airborne emissions that are regulated, or reasonably anticipated by the utility regulatory commission (IURC) to be regulated, by the federal government, the state, or a political subdivision of the state. (The current definition includes only technologies that reduce sulfur or nitrogen emissions.) Allows an existing electric or steam generating facility to petition the IURC for approval of a regulated air emissions project. Requires the IURC to: (1) approve the project if the IURC finds, after notice and hearing, the project to be reasonable and necessary; and (2) provide certain financial incentives for the project. Provides financial incentives for an

(Continued next page)

Effective: Upon passage; July 1, 2007.

Pelath

(SENATE SPONSORS — GARD, HERSHMAN)

January 17, 2007, read first time and referred to Committee on Rules and Legislative Procedures.
February 7, 2007, reassigned to Committee on Commerce, Energy, and Utilities.
February 19, 2007, amended, reported — Do Pass.
February 23, 2007, read second time, amended, ordered engrossed.
February 26, 2007, engrossed. Read third time, passed. Yeas 57, nays 42.

SENATE ACTION

March 5, 2007, read first time and referred to Committee on Utilities and Regulatory Affairs.
March 29, 2007, amended, reported favorably — Do Pass.

Digest Continued

electric utility's implementation of conservation and load management programs. Requires the utility regulatory commission to: (1) create specified financial incentives for investments in conservation and load management programs; and (2) review applications by electric utilities for the incentives created. Requires the IURC, upon the request of the county executives of three or more counties that are located in an electric utility's service area, to study the feasibility of establishing a regional public power authority to: (1) acquire the assets of an electric utility providing retail electric service on April 1, 2007, in specified counties in Indiana; (2) own and operate the assets acquired; and (3) act as a nonprofit utility to provide retail electric service to customers within the participating units. Requires the commission to report its findings not later than December 31, 2007, to: (1) the regulatory flexibility committee; (2) the legislative council; and (3) the county executive of each county in the electric utility's service area on April 1, 2007. Authorizes the regulatory flexibility committee to recommend any legislation necessary to establish a regional public power authority in Indiana.

March 30, 2007

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1824

A BILL FOR AN ACT to amend the Indiana code concerning utilities and transportation.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 8-1-2-6.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6.1. (a) As used in this section, "clean coal technology" means a technology (including precombustion treatment of coal):

(1) that is used at a new or existing electric **or steam** generating facility and directly or indirectly reduces **or avoids** airborne emissions of ~~sulfur or nitrogen based~~ pollutants **that are:**

(A) associated with the combustion or use of coal; and

(B) regulated, or reasonably anticipated by the commission to be regulated, by:

(i) the federal government;

(ii) the state;

(iii) a political subdivision of the state; or

(iv) any agency of a unit of government described in items (i) through (iii); and

(2) that either:

(A) is not in general commercial use at the same or greater

scale in new or existing facilities in the United States as of January 1, 1989; or

(B) has been selected by the United States Department of Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after January 1, 1989.

(b) As used in this section, "Indiana coal" means coal from a mine whose coal deposits are located in the ground wholly or partially in Indiana regardless of the location of the mine's tipple.

(c) Except as provided in subsection (d), the commission shall allow a utility to recover as operating expenses those expenses associated with:

(1) research and development designed to increase use of Indiana coal; and

(2) preconstruction costs (including design and engineering costs) associated with employing clean coal technology at a new or existing coal burning electric **or steam** generating facility if the commission finds that the facility:

(A) utilizes and will continue to utilize (as its primary fuel source) Indiana coal; or

(B) is justified, because of economic considerations or governmental requirements, in utilizing nonIndiana coal;

after the technology is in place.

(d) The commission may only allow a utility to recover preconstruction costs as operating expenses on a particular project if the commission awarded a certificate under IC 8-1-8.7 for that project.

(e) The commission shall establish guidelines for determining recoverable expenses.

SECTION 2. IC 8-1-2-6.6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6.6. (a) As used in this section:

"Clean coal technology" means a technology (including precombustion treatment of coal):

(1) that is used at a new or existing electric **or steam** generating facility and directly or indirectly reduces **or avoids** airborne emissions of ~~sulfur or nitrogen based~~ pollutants **that are:**

(A) associated with **the** combustion or use of coal; and

(B) regulated, or reasonably anticipated by the commission to be regulated, by:

(i) the federal government;

(ii) the state;

(iii) a political subdivision of the state; or

(iv) any agency of a unit of government described in items (i) through (iii); and

(2) that either:

(A) is not in general commercial use at the same or greater scale in new or existing facilities in the United States as of January 1, 1989; or

(B) has been selected by the United States Department of Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after January 1, 1989.

"Indiana coal" means coal from a mine whose coal deposits are located in the ground wholly or partially in Indiana regardless of the location of the mine's tipple.

"Qualified pollution control property" means an air pollution control device on a coal burning electric **or steam** generating facility or any equipment that constitutes clean coal technology that has been approved for use by the commission, that meets applicable state or federal requirements, and that is designed to accommodate the burning of coal from the geological formation known as the Illinois Basin.

"Utility" refers to any electric **or steam** generating utility allowed by law to earn a return on its investment.

(b) Upon the request of a utility that began construction after October 1, 1985, and before March 31, 2002, of qualified pollution control property that is to be used and useful for the public convenience, the commission shall for ratemaking purposes add to the value of that utility's property the value of the qualified pollution control property under construction, but only if at the time of the application and thereafter:

(1) the facility burns only Indiana coal as its primary fuel source once the air pollution control device is fully operational; or

(2) the utility can prove to the commission that the utility is justified because of economic considerations or governmental requirements in utilizing some nonIndiana coal.

(c) The commission shall adopt rules under IC 4-22-2 to implement this section.

SECTION 3. IC 8-1-2-6.7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6.7. (a) As used in this section, "clean coal technology" means a technology (including precombustion treatment of coal):

(1) that is used in a new or existing electric **or steam** generating facility and directly or indirectly reduces **or avoids** airborne emissions of ~~sulfur or nitrogen based~~ pollutants **that are:**

(A) associated with the combustion or use of coal; and

(B) regulated, or reasonably anticipated by the commission to be regulated, by:

(i) the federal government;

(ii) the state;

(iii) a political subdivision of the state; or

(iv) any agency of a unit of government described in items (i) through (iii); and

(2) that either:

(A) is not in general commercial use at the same or greater scale in new or existing facilities in the United States as of January 1, 1989; or

(B) has been selected by the United States Department of Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after January 1, 1989.

(b) The commission shall allow a public or municipally owned electric **or steam** utility that incorporates clean coal technology to depreciate that technology over a period of not less than ten (10) years or the useful economic life of the technology, whichever is less and not more than twenty (20) years if it finds that the facility where the clean coal technology is employed:

(1) utilizes and will continue to utilize (as its primary fuel source) Indiana coal; or

(2) is justified, because of economic considerations or governmental requirements, in utilizing nonIndiana coal;

after the technology is in place.

SECTION 4. IC 8-1-2-6.8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6.8. (a) This section applies to a utility that begins construction of qualified pollution control property after March 31, 2002.

(b) As used in this section, "clean coal technology" means a technology (including precombustion treatment of coal):

(1) that is used in a new or existing energy **or steam** generating facility and directly or indirectly reduces **or avoids** airborne emissions of sulfur, mercury, or nitrogen oxides or other ~~regulated~~ air emissions **that are:**

(A) associated with the combustion or use of coal; and

(B) regulated, or reasonably anticipated by the commission to be regulated, by:

(i) the federal government;

(ii) the state;

(iii) a political subdivision of the state; or

(iv) any agency of a unit of government described in items (i) through (iii); and

(2) that either:

(A) was not in general commercial use at the same or greater scale in new or existing facilities in the United States at the time of enactment of the federal Clean Air Act Amendments of 1990 (P.L.101-549); or

(B) has been selected by the United States Department of Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after the date of enactment of the federal Clean Air Act Amendments of 1990 (P.L.101-549).

(c) As used in this section, "qualified pollution control property" means an air pollution control device on a coal burning energy **or steam** generating facility or any equipment that constitutes clean coal technology that has been approved for use by the commission and that meets applicable state or federal requirements.

(d) As used in this section, "utility" refers to any energy **or steam** generating utility allowed by law to earn a return on its investment.

(e) Upon the request of a utility that begins construction after March 31, 2002, of qualified pollution control property that is to be used and useful for the public convenience, the commission shall for ratemaking purposes add to the value of that utility's property the value of the qualified pollution control property under construction.

(f) The commission shall adopt rules under IC 4-22-2 to implement this section.

SECTION 5. IC 8-1-8.7-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. As used in this chapter, "clean coal technology" means a technology (including precombustion treatment of coal):

(1) that is used in a new or existing electric **or steam** generating facility and directly or indirectly reduces **or avoids** airborne emissions of ~~sulfur or nitrogen based~~ pollutants **that are:**

(A) associated with the combustion or use of coal; and

(B) regulated, or reasonably anticipated by the commission to be regulated, by:

(i) the federal government;

(ii) the state;

(iii) a political subdivision of the state; or

(iv) any agency of a unit of government described in items (i) through (iii); and

(2) that either:

(A) is not in general commercial use at the same or greater scale in new or existing facilities in the United States as of January 1, 1989; or

(B) has been selected by the United States Department of Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after January 1, 1989.

SECTION 6. IC 8-1-8.7-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) Except as provided in subsection (c), a public utility may not use clean coal technology at a new or existing electric **or steam** generating facility without first applying for and obtaining from the commission a certificate that states that public convenience and necessity will be served by the use of clean coal technology.

(b) The commission shall issue a certificate of public convenience and necessity under subsection (a) if the commission finds that a clean coal technology project offers substantial potential of reducing ~~sulfur or nitrogen based~~ pollutants **described in section 1(1) of this chapter** in a more efficient manner than conventional technologies in general use as of January 1, 1989. For purposes of this chapter, a project that the United States Department of Energy has selected for funding under its Innovative Clean Coal Technology program and is finally approved for funding after December 31, 1988, is not considered a conventional technology in general use as of January 1, 1989. When determining whether to grant a certificate under this section, the commission shall examine the following factors:

(1) The costs for constructing, implementing, and using clean coal technology compared to the costs for conventional emission reduction facilities.

(2) Whether a clean coal technology project will also extend the useful life of an existing electric **or steam** generating facility and the value of that extension.

(3) The potential reduction of ~~sulfur and nitrogen based~~ pollutants **described in section 1(1) of this chapter that can be** achieved by the proposed clean coal technology system.

(4) The reduction of ~~sulfur nitrogen based~~ pollutants **described in section 1(1) of this chapter** that can be achieved by conventional pollution control equipment.

(5) Federal ~~sulfur and nitrogen based~~ pollutant emission standards.

(6) The likelihood of success of the proposed project.

(7) The cost and feasibility of the retirement of an existing electric **or steam** generating facility.

(8) The dispatching priority for the facility utilizing clean coal technology, considering direct fuel costs, revenues and expenses of the utility, and environmental factors associated with byproducts resulting from the utilization of the clean coal technology.

(9) Any other factors the commission considers relevant, including whether the construction, implementation, and use of clean coal technology is in the public's interest.

(c) A public utility is not required to obtain a certificate under this chapter for a clean coal technology project that constitutes a research and development project that may be expensed under IC 8-1-2-6.1.

SECTION 7. IC 8-1-8.8-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. As used in this chapter, "clean coal technology" means a technology (including precombustion treatment of coal):

(1) that is used in a new or existing energy **or steam** generating facility and directly or indirectly reduces airborne emissions of sulfur, mercury, or nitrogen oxides or other ~~regulated~~ air emissions **that are:**

(A) associated with the combustion or use of coal; and

(B) regulated, or reasonably anticipated by the commission to be regulated, by:

(i) the federal government;

(ii) the state;

(iii) a political subdivision of the state; or

(iv) any agency of a unit of government described in items (i) through (iii); and

(2) that either:

(A) was not in general commercial use at the same or greater scale in new or existing facilities in the United States at the time of enactment of the federal Clean Air Act Amendments of 1990 (P.L.101-549); or

(B) has been selected by the United States Department of Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after the date of enactment of the federal Clean Air Act Amendments of 1990 (P.L.101-549).

SECTION 8. IC 8-1-8.8-6.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 6.3. (a) As used in this chapter, "existing**

electric or steam generating facility" refers to a facility in Indiana, other than a new energy generating facility, that, regardless of its fuel source, is used to generate electricity or steam.

(b) The term does not include a facility that generates electricity or steam from the incineration, burning, or heating of any:

(1) general household;

(2) institutional;

(3) commercial;

(4) industrial lunchroom;

(5) office; or

(6) landscape;

waste.

SECTION 9. IC 8-1-8.8-11.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 11.5. (a) As used in this section, "regulated air emissions" means air emissions from an electric or steam generating facility that are regulated, or reasonably anticipated by the commission to be regulated, by:**

(1) the federal government;

(2) the state;

(3) a political subdivision of the state; or

(4) any agency of a unit of government described in subdivisions (1) through (3).

(b) As used in this section, "regulated air emissions project" means a project designed to reduce regulated air emissions from an existing electric or steam generating facility. The term includes projects that provide offset programs, such as agricultural and forestry activities, that reduce the level of greenhouse gases in the atmosphere.

(c) An energy utility (as defined in IC 8-1-2.5-2) may petition the commission for approval of the construction, installation, and operation of a regulated air emissions project. If the commission finds, after notice and hearing, the proposed regulated air emissions project to be reasonable and necessary, the commission shall approve the project and provide the following incentives:

(1) The timely recovery of costs associated with the regulated air emissions project, including capital, operation, maintenance, depreciation, tax, and financing costs incurred during the construction and operation of the project.

(2) The recovery of costs associated with:

(A) the purchase of emissions allowances; or

(B) the payment of emission taxes;

arising from compliance with air emissions regulations.

(d) In addition to the incentives described in subsection (c), the commission may provide any other financial incentives the commission considers appropriate.

SECTION 10. IC 8-1-8.9 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]:

Chapter 8.9. Conservation and Load Management Programs for Electric Utilities

Sec. 1. (a) The general assembly makes the following findings:

(1) Growth of Indiana's population and economic base has created a need for additional sources of reliable electric energy in Indiana.

(2) In addition to the construction of new energy generating facilities, the development and implementation of cost effective conservation and load management programs is needed if Indiana is to continue to provide reliable electric utility service at reasonable prices.

(3) Economic barriers exist to the increased development and implementation of conservation and load management programs by electric utilities.

(4) It is in the public interest for the state to encourage the increased development and implementation of cost effective conservation and load management programs by:

(A) removing economic barriers to the development and implementation of conservation and load management programs; and

(B) providing financial incentives to electric utilities to develop and implement conservation and load management programs.

(b) The purpose of this chapter is to:

(1) enhance the competitiveness of Indiana's economy; and

(2) complement the state's efforts to encourage the construction of new energy generating facilities;

through the promotion and increased use of cost effective conservation and load management programs.

Sec. 2. As used in this chapter, "conservation and load management program" means a program that:

(1) is sponsored by an electric utility;

(2) is designed to:

(A) reduce the amount of electricity consumed by the electric utility's customers; or

(B) otherwise influence customers' timing or use of electricity to reduce the demand placed on the electric utility's distribution system; and

(3) employs any of the following to achieve the reduction or change in customers' electricity use described in subdivision (2):

(A) End use devices or other equipment.

(B) Special rates or rate structures.

(C) Customer incentives.

(D) Customer education initiatives.

(E) Other technologies or services.

Sec. 3. (a) As used in this chapter, "conservation and load management costs" means the capital, operating, and maintenance costs incurred by an electric utility in developing and implementing a conservation and load management program.

(b) The term includes the following costs associated with an electric utility's conservation and load management program:

(1) Research and development costs.

(2) Administrative costs.

(3) Labor costs, including costs for services of contractors and subcontractors.

(4) Equipment and depreciation costs.

(5) Tax costs.

(6) Financing costs.

(7) Financial incentives paid to participating customers.

(8) Marketing and advertising costs.

(9) Monitoring and evaluation costs.

(10) Financial incentives offered by the electric utility for:

(A) investment in; or

(B) performance associated with;

its conservation and load management program.

Sec. 4. (a) As used in this chapter, "electric utility" means a utility:

(1) that generates or distributes electricity; and

(2) whose rates and charges are regulated by the commission.

(b) The term includes the following:

(1) A rural electric membership corporation organized under IC 8-1-13.

(2) A corporation organized under IC 23-17 that is an electric cooperative and that has at least one (1) member that is a corporation organized under IC 8-1-13.

Sec. 5. As used in this chapter, "lost revenues" refers to

revenues lost by an electric utility as a result of not generating electricity because of the implementation of a conservation and load management program. In determining the revenues lost as a result of a conservation and load management program, an electric utility shall subtract the value of any reduced operating or maintenance costs resulting from the program, including fuel cost savings.

Sec. 6. As used in this chapter, "performance based shared savings incentive" means an incentive mechanism designed to allocate the net system benefits of an electric utility's conservation and load management programs between:

(1) the electric utility's shareholders; and

(2) the electric utility's retail customers.

Sec. 7. (a) The commission shall encourage electric utilities to implement conservation and load management programs by creating the following incentives for the implementation of conservation and load management programs, if the programs are found by the commission to be reasonable and necessary:

(1) The timely recovery of conservation and load management costs over a reasonable amortization period, as determined by the commission.

(2) The timely recovery of lost revenues, or the authorization of other mechanisms to remove lost revenues as a barrier to the implementation of conservation and load management programs.

(3) The authorization of a return to the electric utility in the form of:

(A) a timely return equal to the electric utility's weighted cost of capital (as determined under 170 IAC 4-6-14) with respect to the electric utility's total unrecovered capital investment in conservation and load management programs; or

(B) a performance based shared savings incentive.

(4) Other financial incentives the commission considers appropriate.

(b) An electric utility that seeks one (1) or more of the incentives described in subsection (a) must file, on a form approved by the commission, an application with the commission for approval of the incentives sought.

(c) The commission shall, after notice and hearing, issue a determination on the eligibility of the electric utility's conservation and load management program for the financial incentives

described in subsection (a) not later than one hundred twenty (120) days after the date of the electric utility's application under subsection (b).

SECTION 11. [EFFECTIVE UPON PASSAGE] **(a) As used in this SECTION, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.**

(b) As used in this SECTION, "electric utility" means a public utility (as defined in IC 8-1-2-1(a)) that:

(1) provides retail electric service to:

(A) more than four hundred thousand (400,000); but

(B) less than five hundred thousand (500,000);

retail electric customers in Indiana on April 1, 2007; and

(2) has a service area that includes, among other counties, each of the counties described in IC 36-7-7.6-1.

(c) As used in this SECTION, "electric utility holding company" means a corporation, company, partnership, or limited liability company that owns an electric utility.

(d) As used in this SECTION, "regional public power authority" means a multicounty public power authority established to:

(1) acquire the generation, transmission, and distribution assets of an electric utility or an electric utility holding company;

(2) own and operate the assets described in subdivision (1); and

(3) act as a nonprofit utility to provide retail electric service to residential, commercial, industrial, and governmental customers within the participating units.

(e) Upon the request of the county executives of three (3) or more counties that are located in an electric utility's service area, the commission shall study the feasibility of establishing a regional public power authority. The study required by this subsection must include the following:

(1) An examination of the need to:

(A) enact new state statutes or regulations; or

(B) amend existing state statutes or regulations;

to permit the establishment of a regional public power authority.

(2) A valuation of the electric utility's generation, transmission, and distribution assets to be acquired by the regional public power authority.

(3) A study of:

(A) existing and potential funding sources or other mechanisms, including the use of eminent domain, available to the regional public power authority to acquire the assets described in subdivision (2); and

(B) the method for determining each participating unit's respective:

(i) contribution toward the acquisition of the assets; and

(ii) ownership interest in the assets acquired.

(4) A study of similarly sized public power authorities operating in the United States, including information on the assets, expenses, operations, management, and customer bases of the authorities, to the extent the information is available.

(5) A cost benefit analysis of establishing a regional public power authority.

(6) A determination of whether the establishment of a regional public power authority is in the public interest.

(7) An examination of any other issues concerning the establishment of a regional public power authority that the commission considers relevant or necessary for study.

(f) As necessary to conduct the study required by subsection (e), the commission may:

(1) make use of the commission's existing resources and technical staff;

(2) employ or consult with outside analysts, engineers, experts, or other professionals; and

(3) consult with other:

(A) public power authorities operating in the United States; or

(B) state regulatory commissions that:

(i) regulate public power authorities; or

(ii) have conducted similar studies.

(g) Not later than December 31, 2007, the commission shall provide a report to the following on the commission's findings from the study conducted under subsection (e):

(1) The regulatory flexibility committee established by IC 8-1-2.6-4. The report provided to the regulatory flexibility committee under this subsection must be separate from the commission's annual report to the regulatory flexibility committee under IC 8-1-2.5-9(b).

(2) The legislative council. The report provided to the legislative council under this subsection must be in an electronic format under IC 5-14-6.

(3) The county executive of each county in the electric utility's service area on April 1, 2007.

(h) The report required by subsection (g) must contain the following:

(1) A summary of the commission's findings with respect to each issue set forth in subsection (e).

(2) Recommendations to the regulatory flexibility committee on any legislation needed to establish a regional public power authority.

(3) Any other findings or recommendations that the commission considers relevant or useful to the entities described in subsection (g).

(i) Before the commission submits its report under subsection (g), any entity described in subsection (g) may require the commission to provide one (1) or more status reports on the commission's study under subsection (e). A status report provided to the legislative council under this subsection must be in an electronic format under IC 5-14-6.

(j) The regulatory flexibility committee:

(1) shall review the analyses and recommendations of the commission contained in:

(A) any status reports provided by the commission under subsection (i); and

(B) the commission's final report provided under subsection (g); and

(2) may recommend to the general assembly any legislation that is necessary to establish a regional public power authority in Indiana, if the regulatory flexibility committee determines that the establishment of a regional public power authority is in the public interest.

(k) This SECTION does not empower the commission or any entity described in subsection (g) to require an electric utility to disclose confidential and proprietary business plans and other confidential information without adequate protection of the information. The commission and all entities described in subsection (g) shall exercise all necessary caution to avoid disclosure of confidential information supplied under this SECTION.

SECTION 12. **An emergency is declared for this act.**

COMMITTEE REPORT

Mr. Speaker: Your Committee on Commerce, Energy and Utilities, to which was referred House Bill 1824, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana code concerning utilities and transportation.

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to HB 1824 as introduced.)

CROOKS, Chair

Committee Vote: yeas 6, nays 5.

HOUSE MOTION

Mr. Speaker: I move that House Bill 1824 be amended to read as follows:

Page 1, delete lines 1 through 17.

Delete pages 2 through 3.

Page 4, delete lines 1 through 9.

Page 4, line 10, delete "2." and insert "1.".

Page 4, line 35, delete "The" and insert "**Upon the request of the county executives of three (3) or more counties that are located in an electric utility's service area, the**".

Page 6, delete lines 5 through 6.

Page 6, line 7, delete "(4)" and insert "**(3)**".

Renumber all SECTIONS consecutively.

(Reference is to HB 1824 as printed February 20, 2007.)

PELATH

SENATE MOTION

Madam President: I move that Senator Hershman be added as cosponsor of Engrossed House Bill 1824.

GARD

COMMITTEE REPORT

Madam President: The Senate Committee on Utilities and Regulatory Affairs, to which was referred House Bill No. 1824, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 8-1-2-6.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6.1. (a) As used in this section, "clean coal technology" means a technology (including precombustion treatment of coal):

(1) that is used at a new or existing electric **or steam** generating facility and directly or indirectly reduces **or avoids** airborne emissions of ~~sulfur or nitrogen based~~ pollutants **that are:**

(A) associated with the combustion or use of coal; and

(B) regulated, or reasonably anticipated by the commission to be regulated, by:

(i) the federal government;

(ii) the state;

(iii) a political subdivision of the state; or

(iv) any agency of a unit of government described in items (i) through (iii); and

(2) that either:

(A) is not in general commercial use at the same or greater scale in new or existing facilities in the United States as of January 1, 1989; or

(B) has been selected by the United States Department of Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after January 1, 1989.

(b) As used in this section, "Indiana coal" means coal from a mine whose coal deposits are located in the ground wholly or partially in Indiana regardless of the location of the mine's tipple.

(c) Except as provided in subsection (d), the commission shall allow a utility to recover as operating expenses those expenses associated with:

(1) research and development designed to increase use of Indiana coal; and

(2) preconstruction costs (including design and engineering costs) associated with employing clean coal technology at a new or existing coal burning electric **or steam** generating facility if the commission finds that the facility:

(A) utilizes and will continue to utilize (as its primary fuel source) Indiana coal; or

(B) is justified, because of economic considerations or governmental requirements, in utilizing nonIndiana coal;

after the technology is in place.

(d) The commission may only allow a utility to recover preconstruction costs as operating expenses on a particular project if the commission awarded a certificate under IC 8-1-8.7 for that project.

(e) The commission shall establish guidelines for determining recoverable expenses.

SECTION 2. IC 8-1-2-6.6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6.6. (a) As used in this section:

"Clean coal technology" means a technology (including precombustion treatment of coal):

(1) that is used at a new or existing electric **or steam** generating facility and directly or indirectly reduces **or avoids** airborne emissions of ~~sulfur or nitrogen based~~ pollutants **that are:**

(A) associated with **the** combustion or use of coal; and

(B) regulated, or reasonably anticipated by the commission to be regulated, by:

(i) the federal government;

(ii) the state;

(iii) a political subdivision of the state; or

(iv) any agency of a unit of government described in items (i) through (iii); and

(2) that either:

(A) is not in general commercial use at the same or greater scale in new or existing facilities in the United States as of January 1, 1989; or

(B) has been selected by the United States Department of Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding

on or after January 1, 1989.

"Indiana coal" means coal from a mine whose coal deposits are located in the ground wholly or partially in Indiana regardless of the location of the mine's tipple.

"Qualified pollution control property" means an air pollution control device on a coal burning electric **or steam** generating facility or any equipment that constitutes clean coal technology that has been approved for use by the commission, that meets applicable state or federal requirements, and that is designed to accommodate the burning of coal from the geological formation known as the Illinois Basin.

"Utility" refers to any electric **or steam** generating utility allowed by law to earn a return on its investment.

(b) Upon the request of a utility that began construction after October 1, 1985, and before March 31, 2002, of qualified pollution control property that is to be used and useful for the public convenience, the commission shall for ratemaking purposes add to the value of that utility's property the value of the qualified pollution control property under construction, but only if at the time of the application and thereafter:

(1) the facility burns only Indiana coal as its primary fuel source once the air pollution control device is fully operational; or

(2) the utility can prove to the commission that the utility is justified because of economic considerations or governmental requirements in utilizing some nonIndiana coal.

(c) The commission shall adopt rules under IC 4-22-2 to implement this section.

SECTION 3. IC 8-1-2-6.7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6.7. (a) As used in this section, "clean coal technology" means a technology (including precombustion treatment of coal):

(1) that is used in a new or existing electric **or steam** generating facility and directly or indirectly reduces **or avoids** airborne emissions of ~~sulfur or nitrogen based~~ pollutants **that are:**

(A) associated with the combustion or use of coal; and

(B) regulated, or reasonably anticipated by the commission to be regulated, by:

(i) the federal government;

(ii) the state;

(iii) a political subdivision of the state; or

(iv) any agency of a unit of government described in items (i) through (iii); and

(2) that either:

(A) is not in general commercial use at the same or greater scale in new or existing facilities in the United States as of January 1, 1989; or

(B) has been selected by the United States Department of Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after January 1, 1989.

(b) The commission shall allow a public or municipally owned electric **or steam** utility that incorporates clean coal technology to depreciate that technology over a period of not less than ten (10) years or the useful economic life of the technology, whichever is less and not more than twenty (20) years if it finds that the facility where the clean coal technology is employed:

(1) utilizes and will continue to utilize (as its primary fuel source) Indiana coal; or

(2) is justified, because of economic considerations or governmental requirements, in utilizing nonIndiana coal;

after the technology is in place.

SECTION 4. IC 8-1-2-6.8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6.8. (a) This section applies to a utility that begins construction of qualified pollution control property after March 31, 2002.

(b) As used in this section, "clean coal technology" means a technology (including precombustion treatment of coal):

(1) that is used in a new or existing energy **or steam** generating facility and directly or indirectly reduces **or avoids** airborne emissions of sulfur, mercury, or nitrogen oxides or other ~~regulated~~ air emissions **that are:**

(A) associated with the combustion or use of coal; and

(B) regulated, or reasonably anticipated by the commission to be regulated, by:

(i) the federal government;

(ii) the state;

(iii) a political subdivision of the state; or

(iv) any agency of a unit of government described in items (i) through (iii); and

(2) that either:

(A) was not in general commercial use at the same or greater scale in new or existing facilities in the United States at the time of enactment of the federal Clean Air Act Amendments of 1990 (P.L.101-549); or

(B) has been selected by the United States Department of

Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after the date of enactment of the federal Clean Air Act Amendments of 1990 (P.L.101-549).

(c) As used in this section, "qualified pollution control property" means an air pollution control device on a coal burning energy **or steam** generating facility or any equipment that constitutes clean coal technology that has been approved for use by the commission and that meets applicable state or federal requirements.

(d) As used in this section, "utility" refers to any energy **or steam** generating utility allowed by law to earn a return on its investment.

(e) Upon the request of a utility that begins construction after March 31, 2002, of qualified pollution control property that is to be used and useful for the public convenience, the commission shall for ratemaking purposes add to the value of that utility's property the value of the qualified pollution control property under construction.

(f) The commission shall adopt rules under IC 4-22-2 to implement this section.

SECTION 5. IC 8-1-8.7-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. As used in this chapter, "clean coal technology" means a technology (including precombustion treatment of coal):

(1) that is used in a new or existing electric **or steam** generating facility and directly or indirectly reduces **or avoids** airborne emissions of ~~sulfur or nitrogen based~~ pollutants **that are:**

(A) associated with the combustion or use of coal; and

(B) regulated, or reasonably anticipated by the commission to be regulated, by:

(i) the federal government;

(ii) the state;

(iii) a political subdivision of the state; or

(iv) any agency of a unit of government described in items (i) through (iii); and

(2) that either:

(A) is not in general commercial use at the same or greater scale in new or existing facilities in the United States as of January 1, 1989; or

(B) has been selected by the United States Department of Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after January 1, 1989.

SECTION 6. IC 8-1-8.7-3 IS AMENDED TO READ AS

FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) Except as provided in subsection (c), a public utility may not use clean coal technology at a new or existing electric **or steam** generating facility without first applying for and obtaining from the commission a certificate that states that public convenience and necessity will be served by the use of clean coal technology.

(b) The commission shall issue a certificate of public convenience and necessity under subsection (a) if the commission finds that a clean coal technology project offers substantial potential of reducing ~~sulfur or nitrogen based~~ pollutants **described in section 1(1) of this chapter** in a more efficient manner than conventional technologies in general use as of January 1, 1989. For purposes of this chapter, a project that the United States Department of Energy has selected for funding under its Innovative Clean Coal Technology program and is finally approved for funding after December 31, 1988, is not considered a conventional technology in general use as of January 1, 1989. When determining whether to grant a certificate under this section, the commission shall examine the following factors:

(1) The costs for constructing, implementing, and using clean coal technology compared to the costs for conventional emission reduction facilities.

(2) Whether a clean coal technology project will also extend the useful life of an existing electric **or steam** generating facility and the value of that extension.

(3) The potential reduction of ~~sulfur and nitrogen based~~ pollutants **described in section 1(1) of this chapter that can be** achieved by the proposed clean coal technology system.

(4) The reduction of ~~sulfur nitrogen based~~ pollutants **described in section 1(1) of this chapter** that can be achieved by conventional pollution control equipment.

(5) Federal ~~sulfur and nitrogen based~~ pollutant emission standards.

(6) The likelihood of success of the proposed project.

(7) The cost and feasibility of the retirement of an existing electric **or steam** generating facility.

(8) The dispatching priority for the facility utilizing clean coal technology, considering direct fuel costs, revenues and expenses of the utility, and environmental factors associated with byproducts resulting from the utilization of the clean coal technology.

(9) Any other factors the commission considers relevant, including whether the construction, implementation, and use of

clean coal technology is in the public's interest.

(c) A public utility is not required to obtain a certificate under this chapter for a clean coal technology project that constitutes a research and development project that may be expensed under IC 8-1-2-6.1.

SECTION 7. IC 8-1-8.8-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. As used in this chapter, "clean coal technology" means a technology (including precombustion treatment of coal):

(1) that is used in a new or existing energy **or steam** generating facility and directly or indirectly reduces airborne emissions of sulfur, mercury, or nitrogen oxides or other ~~regulated~~ air emissions **that are:**

(A) associated with the combustion or use of coal; and

(B) regulated, or reasonably anticipated by the commission to be regulated, by:

(i) the federal government;

(ii) the state;

(iii) a political subdivision of the state; or

(iv) any agency of a unit of government described in items (i) through (iii); and

(2) that either:

(A) was not in general commercial use at the same or greater scale in new or existing facilities in the United States at the time of enactment of the federal Clean Air Act Amendments of 1990 (P.L.101-549); or

(B) has been selected by the United States Department of Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after the date of enactment of the federal Clean Air Act Amendments of 1990 (P.L.101-549).

SECTION 8. IC 8-1-8.8-6.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 6.3. (a) As used in this chapter, "existing electric or steam generating facility" refers to a facility in Indiana, other than a new energy generating facility, that, regardless of its fuel source, is used to generate electricity or steam.**

(b) The term does not include a facility that generates electricity or steam from the incineration, burning, or heating of any:

(1) general household;

(2) institutional;

(3) commercial;

(4) industrial lunchroom;

(5) office; or

(6) landscape;

waste.

SECTION 9. IC 8-1-8.8-11.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 11.5. (a) As used in this section, "regulated air emissions" means air emissions from an electric or steam generating facility that are regulated, or reasonably anticipated by the commission to be regulated, by:**

(1) the federal government;

(2) the state;

(3) a political subdivision of the state; or

(4) any agency of a unit of government described in subdivisions (1) through (3).

(b) As used in this section, "regulated air emissions project" means a project designed to reduce regulated air emissions from an existing electric or steam generating facility. The term includes projects that provide offset programs, such as agricultural and forestry activities, that reduce the level of greenhouse gases in the atmosphere.

(c) An energy utility (as defined in IC 8-1-2.5-2) may petition the commission for approval of the construction, installation, and operation of a regulated air emissions project. If the commission finds, after notice and hearing, the proposed regulated air emissions project to be reasonable and necessary, the commission shall approve the project and provide the following incentives:

(1) The timely recovery of costs associated with the regulated air emissions project, including capital, operation, maintenance, depreciation, tax, and financing costs incurred during the construction and operation of the project.

(2) The recovery of costs associated with:

(A) the purchase of emissions allowances; or

(B) the payment of emission taxes;

arising from compliance with air emissions regulations.

(d) In addition to the incentives described in subsection (c), the commission may provide any other financial incentives the commission considers appropriate.

SECTION 10. IC 8-1-8.9 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]:

Chapter 8.9. Conservation and Load Management Programs for Electric Utilities

Sec. 1. (a) The general assembly makes the following findings:

(1) Growth of Indiana's population and economic base has created a need for additional sources of reliable electric energy in Indiana.

(2) In addition to the construction of new energy generating facilities, the development and implementation of cost effective conservation and load management programs is needed if Indiana is to continue to provide reliable electric utility service at reasonable prices.

(3) Economic barriers exist to the increased development and implementation of conservation and load management programs by electric utilities.

(4) It is in the public interest for the state to encourage the increased development and implementation of cost effective conservation and load management programs by:

(A) removing economic barriers to the development and implementation of conservation and load management programs; and

(B) providing financial incentives to electric utilities to develop and implement conservation and load management programs.

(b) The purpose of this chapter is to:

(1) enhance the competitiveness of Indiana's economy; and

(2) complement the state's efforts to encourage the construction of new energy generating facilities;

through the promotion and increased use of cost effective conservation and load management programs.

Sec. 2. As used in this chapter, "conservation and load management program" means a program that:

(1) is sponsored by an electric utility;

(2) is designed to:

(A) reduce the amount of electricity consumed by the electric utility's customers; or

(B) otherwise influence customers' timing or use of electricity to reduce the demand placed on the electric utility's distribution system; and

(3) employs any of the following to achieve the reduction or change in customers' electricity use described in subdivision (2):

(A) End use devices or other equipment.

(B) Special rates or rate structures.

(C) Customer incentives.

(D) Customer education initiatives.

(E) Other technologies or services.

Sec. 3. (a) As used in this chapter, "conservation and load management costs" means the capital, operating, and maintenance costs incurred by an electric utility in developing and implementing a conservation and load management program.

(b) The term includes the following costs associated with an electric utility's conservation and load management program:

(1) Research and development costs.

(2) Administrative costs.

(3) Labor costs, including costs for services of contractors and subcontractors.

(4) Equipment and depreciation costs.

(5) Tax costs.

(6) Financing costs.

(7) Financial incentives paid to participating customers.

(8) Marketing and advertising costs.

(9) Monitoring and evaluation costs.

(10) Financial incentives offered by the electric utility for:

(A) investment in; or

(B) performance associated with;

its conservation and load management program.

Sec. 4. (a) As used in this chapter, "electric utility" means a utility:

(1) that generates or distributes electricity; and

(2) whose rates and charges are regulated by the commission.

(b) The term includes the following:

(1) A rural electric membership corporation organized under IC 8-1-13.

(2) A corporation organized under IC 23-17 that is an electric cooperative and that has at least one (1) member that is a corporation organized under IC 8-1-13.

Sec. 5. As used in this chapter, "lost revenues" refers to revenues lost by an electric utility as a result of not generating electricity because of the implementation of a conservation and load management program. In determining the revenues lost as a result of a conservation and load management program, an electric utility shall subtract the value of any reduced operating or maintenance costs resulting from the program, including fuel cost savings.

Sec. 6. As used in this chapter, "performance based shared savings incentive" means an incentive mechanism designed to

allocate the net system benefits of an electric utility's conservation and load management programs between:

(1) the electric utility's shareholders; and

(2) the electric utility's retail customers.

Sec. 7. (a) The commission shall encourage electric utilities to implement conservation and load management programs by creating the following incentives for the implementation of conservation and load management programs, if the programs are found by the commission to be reasonable and necessary:

(1) The timely recovery of conservation and load management costs over a reasonable amortization period, as determined by the commission.

(2) The timely recovery of lost revenues, or the authorization of other mechanisms to remove lost revenues as a barrier to the implementation of conservation and load management programs.

(3) The authorization of a return to the electric utility in the form of:

(A) a timely return equal to the electric utility's weighted cost of capital (as determined under 170 IAC 4-6-14) with respect to the electric utility's total unrecovered capital investment in conservation and load management programs; or

(B) a performance based shared savings incentive.

(4) Other financial incentives the commission considers appropriate.

(b) An electric utility that seeks one (1) or more of the incentives described in subsection (a) must file, on a form approved by the commission, an application with the commission for approval of the incentives sought.

(c) The commission shall, after notice and hearing, issue a determination on the eligibility of the electric utility's conservation and load management program for the financial incentives described in subsection (a) not later than one hundred twenty (120) days after the date of the electric utility's application under subsection (b).".

Page 1, line 10, after "counties," insert "**each of**".
Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1824 as reprinted February 24, 2007.)

HERSHMAN, Chairperson

Committee Vote: Yeas 9, Nays 0.